

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
Petition of SBC Communications, Inc For a)	
Declaratory Ruling Regarding IP Platform)	
Services)	

REPLY COMMENTS OF RNK, INC. D/B/A RNK TELECOM

RNK, Inc. d/b/a RNK Telecom (“RNK”), through its attorneys, hereby submits these reply comments in response to comments made to the Commission’s Notice of Proposed Rulemaking regarding IP-Enabled Services and the SBC Communications, Inc. Petition for a Declaratory Ruling Regarding IP Platform Services¹.

I. INTRODUCTION

RNK is a registered Competitive Local Exchange Carrier (“CLEC”) in Massachusetts, Rhode Island, New York, and Connecticut offering residential and business telecommunications services via resale and its own facilities. RNK has CLEC authority pending in Florida and has interexchange (“IXC”) authority in Vermont, Florida, and Maine, as well as international authority from the Federal Communications Commission (“FCC” or “Commission”) Via its own facilities, RNK serves a variety of customers, including IP-Enabled telephone customers, with a broad range of telecommunications and non-telecommunications services. As a small CLEC, RNK is constantly competing for customers with incumbent local exchange carriers (“ILECs”)

¹ See *IP Enabled Services*, Notice of Proposed Rulemaking, 19 F.C.C. Rcd 4863 (2004) (“NPRM”) and *Petition of SBC Communications, Inc. For A Declaratory Ruling Regarding IP Platform Services* (Feb. 5, 2004).

as well as other CLECs, and IP-Enabled Phone services have created exciting new opportunities for RNK. Recently, RNK began providing full-service IP-Enabled Phone services applying the “traditional” regulatory regime under which it offers wireline equivalents. RNK will limit its reply to instances concerning IP-Enabled Phone Service that functions essentially like traditional phone services. Although RNK is a firm believer of free-market economies, in this instance, public convenience, interest and necessity require the Commission to act.

II. JURISDICTIONAL NATURE OF IP-ENABLED PHONE SERVICES

RNK also shares Commission’s well-founded concern that unnecessary and burdensome regulatory requirements may adversely impact the deployment and growth of IP-Enabled Phone Services.² As further explained below, RNK believes that sensible regulation can bring stability and competition on a “level playing field” to the industry.

a. IP-Enabled Telecommunications Are Largely Interstate Services Subject To The Authority Of The Commission As A “Telecommunications Service”

IP-Enabled Telecommunications services are largely interstate in nature and should be subject to Commission authority, but the Commission should use its broad discretionary powers to limit the scope of such regulation to those necessary to achieve important social goals. RNK agrees with those commenters who suggest that IP-Enabled Telecommunications Services are, for the most part, interstate services.³ That said, a large component of IP-Enabled telecommunications is purely intrastate, and a substantial proportion of these services do and will continue to terminate on the Publicly Switched Telephone Network (“PSTN”) for at least the

² IP-Enabled NPRM ¶¶ 3-5.

³ See Vonage Holdings Corp., Comments, Docket No. 04-36, Page 14.

near future.⁴ However, RNK disagrees with those providers who claim that IP-Enabled Telecommunications are “information services” subject to Title I regulation only.⁵

RNK agrees with commentators, such as Time Warner Telecom, who contend that IP-Enabled Telecommunications is a “telecommunications Service” and is subject to Title II regulation by the Commission.⁶ RNK also supports the Commission using its broad forbearance power to exclude economic regulation of non-dominant IP-Enabled Telecommunications providers and limiting regulation essentially to those necessary to achieve compelling social goals.⁷ RNK believes that the Commission should assert jurisdiction over VoIP services based upon the fact that most VoIP service packages are bundled and thus largely or predominantly

⁴ Testimony before the United States Committee On Commerce, Science And Transportation, Testimony of the Honorable Stan Wise, Commissioner, Georgia Public Service Commission and President, NARUC on June 16, 2004 <<http://www.naruc.org/associations/1773/files/wisevoiptestimony04.pdf>> (“Today, the VOIP services that are attracting most attention are actually hybrid services that bundle packet-switched calls with the services of traditional competitive and long-distance phone companies, terminating well over 90 percent of their calls to the Public-Switched Telephone Network (PSTN).”).

⁵ See *Generally* Vonage; Comcast, Comments, Docket No. 04-36. The Commission should look to the functional equivalency of the Service and not be fooled by the transmission path. In the *Local Competition Order*, the Commission determined “as a general policy matter, that all telecommunications carriers that compete with each other should be treated alike regardless of the technology used unless there is a compelling reason to do otherwise.” (11 F.C.C. Rcd at 15850 at ¶ 993).

⁶ Time Warner Telecom, Comments, Docket No. 04-36, at 16. Further, the Telecommunication Act of 1996 defines a “telecommunications carrier” as “any provider of telecommunications services.” (Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (“1996 Act” or “the Act”). A “telecommunications service” is defined as the “offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” The 1996 Act defines “telephone exchange service” as “service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area . . . and which is covered by the exchange service charge, or (B) *comparable service* provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.” In the *Local Competition Order*, the Commission also determined “as a general policy matter, that all telecommunications carriers that compete with each other should be treated alike regardless of the technology used unless there is a compelling reason to do otherwise.” IP-Enabled phone providers offer services that are “comparable” to telephone exchange service and supports the notion that these services may become a true economic substitute for wireline local exchange service in the future. IP-Enabled phone providers offer services that are “comparable” to telephone exchange service and supports the notion that these services may become a true economic substitute for wireline local exchange service in the future and IP-Enabled Telecommunications is offered indifferently to all customers such that customers can transmit information of their choosing without change in form or content. The ultimate service deployed to the customer is indistinguishable from traditional phone service to end users and it is in the public interest to treat these services similarly

⁷ Time Warner, at 36.

interstate (and international), and should set a federal minimum level of regulation for all VoIP in the public protection areas of slamming, truth-in-billing, access to 911/E911, and other federal public protection rules and regulations. The FCC should delegate authority back to the states to enable the state PUCs to, when necessary to meet their public protection mandates, exceed the FCC's minimum threshold with more stringent regulations and rules, such as public safety, service quality, slamming, cramming, and protection of the elderly and disabled, to maintain oversight in those areas as they do now with traditional wireline services.

b. Public Utilities Commissions Have Compelling State Interests In Regulating IP-Enabled Telecommunications.

RNK believes that Public Utility Commissions have an important role to play in a shared regulatory regime and indeed it is their mandate to assure the safety and security of their citizens and respective state telecommunications networks. RNK believes that entirely depriving states of any role in protecting their citizens will certainly lead to costly litigation and uncertainty that would be much more destructive than any shared regulatory framework the Commission could contrive.

State Commission rightfully assert compelling public safety and consumer protection concerns that they hold, especially in light of services that purport to be replacements for traditional local service. RNK, for one, understands these concerns and has made every effort to comply, and indeed does comply, with state requirements where RNK offers its broadband VoIP service as a function equivalent of local service replacement service, including customer termination/billing requirements and 911 services – RNK sees it as just offering telephone services over a different medium. RNK believes that its current approach is in fact *required* since

the Commission has taken no action yet to preempt the field.⁸ Accordingly, RNK recommends that the Commission cede authority to the states with existing (and ability to create) consumer protection and other regulations more stringent than those proposed by the Commission.

III. THE COMMISSION MUST ACT IN THE INTERIM TO BRING STABILITY TO IP-ENABLED SERVICES WHILE ADDRESSING THE CONCERNS OF THE STATES

The Commission must act in the interim between the its release of a final decision in a way that will bring stability to IP-Enabled Telecommunications industry and address the legitimate concerns of the states. Currently, carriers offering both traditional wireline and IP-Enabled Telecommunications are faced with the

a. The Commission Should Act Decisively And Without Delay In Order To Bring Stability To The Industry.

The IP-Enabled telecommunications industry is in a state of chaos, with those providers who are CLECs attempting to comply with what they think the commissions will do while internet partisans make every attempt to avoid capture by the regulatory secret police. This situation has allowed providers to engage in classic regulatory arbitrage, where telecom services that traverse the Internet—and the companies that provide them—are afforded “special treatment,” to the detriment of consumers and competitors. The FCC has already ruled against AT&T⁹ for its policy of treating PSTN

⁸ For example: The Massachusetts Department of Telecommunications and Energy (“DTE”) (Mass. General Laws c. 159 §12 “The department shall [...] have general supervision and regulation of, and jurisdiction and control over [...] [t]he transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or /any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment appertaining thereto, or utilized in connection therewith./ (emphasis added)” and the New York Department of Public Service (N.Y. Public Service Law (“PSL”) §5(d) “[giving the Department jurisdiction over] every telephone line which lies wholly within the state and that part within the state of New York of every telephone line which lies partly within and partly without the state and to the persons or corporations owning, leasing or operating any such telephone line” See also PSL §§1, 92.) and other state commissions have broad statutory powers to not only regulate, but impose penalties for non-compliance...” RNK hazards its authority to provide all services in these states and others by not complying with the various rules.

⁹ See, generally, FCC 04-97, Order, In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, issued April 14, 2004, released April 21, 2004.

originated and terminated calls that use VoIP for long haul transport as non-access calls as regulatory arbitrage, but at least AT&T was properly authorized to provide that service. RNK believes that a light regulatory touch can bring stability, customer confidence and investments.

b. A “Level Playing Field” For All Providers Will Stimulate Competition And Investment In IP-Enabled Phone Service.

Some commenters have suggested that imposing wireline-type regulation will stifle competition and deployment.¹⁰ RNK is of the opinion that some regulations will bring enhanced stability to the industry, producing increased investor and consumer confidence in the service.¹¹ The wireline phone regulatory regime is a known entity to consumers and investors that has served the public for over 100 years. This type of stability will attract business customers who justifiably do not want to risk paying for a service that merely purports to offer similar functionality to their current wireline services for a lower price without assurance that their provider is offering a robust product with the services and quality they have come to expect. Likewise, residential consumers should not be placed in the position that they may have to compromise their safety and security in order to obtain affordable, yet cutting-edge,

¹⁰ Vonage at 4.

¹¹ See /Order Establishing Balanced Regulatory Framework For Vonage Holdings Corporation/ (NYPSC Case 03-C-1285, /Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation Concerning Provision of Local Exchange and InterExchange Telephone Service in New York State in Violation of the Public Service Law/, “NYPSC Vonage Order,” issued and effective May 21, 2004) at 16 (“Telecommunications are the lifeblood of this state's economy. [...] Any regulation imposes costs that may diminish the promise of new technologies. At the same time, our core public interest concerns, including most prominently public safety (e.g., 911 emergency services) and network reliability must be addressed. To be most effective, regulation should target core public policy concerns, while minimally impinging on the free flow of markets and development of technologies.”); *See also* NJ Rate payer Advocate, Comments at 14. *See Also* New Jersey Rate payer Advocate, Comments, Docket No. 04-36, at 14.

telecommunications services.¹² Investors should not be expected to provide much-needed capital to innovative companies like RNK if the status quo (i.e., either a murky or non-existent regulatory universe) were to persist.

That said, while the Commission should apply public safety and consumer protection regulations to IP-Enabled Phone services, the Commission should utilize its broad forbearance authority¹³ (cite) in regards to economic regulation of these services. RNK joins other commentators in asking the Commission to forbear from economic and pricing regulation of IP-Enabled Phone services¹⁴ and points to the Commission's actions in relation to competitive interstate services as an example as to how this can foster competition while still protecting consumers.¹⁵

¹² It should also be noted that if the Commission were to define IP-Enabled Services as “information” services, it would have the practical effect of relegating an entire class of phone service customers unprotected while imposing taxes and the brunt of the burden for contributions to the universal service fund on those customers who do not have access to or cannot afford a broadband or DSL connection.

¹³ 47 USC § 160 (“Notwithstanding section 332(c)(1)(A) of this title, the Commission shall forbear from applying any regulation or any provision of this chapter to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that--(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.

¹⁴ See New Jersey Ratepayer Advocate Comments at 5; *See also* Time Warner, at 36 (“[...] Commission should ensure that only those federal and state common carrier regulations that are necessary and appropriate apply to VoIP.”).

¹⁵ For example, this Commission promulgated rules detariffing most interstate and international interexchange services provided by non-dominant carriers. *See* 47 C.F.R. §61.19(a)-(e) (66 FR 16881, Mar. 28, 2001).

c. The Commission Should Adopt a Two Tier Approach Addressing The Regulatory Framework of IP-Enabled Telecommunications Depending On Whether Or Not The Service Acts As A Wireline Replacement For Local Service.

In its final decision, the Commission should adopt a two-tier approach to regulation of IP-Enabled Telecommunications based on the actual services and functional offerings to the end user customer. This approach will strike a balance between the legitimate concerns expressed by State Commissions in this docket and those of IP-Enabled Telecommunications providers. RNK agrees with commentators who suggest classifying IP-Enabled Telecommunications based on the service provided to end users and suggests two tier approach segregating services based on functionality to the end user customer.

i. IP-Enabled Telecommunications Services That Offer A Replacement For Traditional Wireline Service Should Be Subject To The Scrutiny Of State Commissions.

IP-Enabled Telecommunications Services offering a replacement for traditional wireline service should be subject to similar rules and requirements of an CLEC in order to protect customers and allow state commissions to fulfill their statutory mandates. RNK agrees with commentators who suggest that IP-Enabled Telecommunications wireline replacement services are no different from traditional providers.¹⁶ IP-Enabled Phone services provide the same functionality as traditional phone services and should not be able to gain a competitive advantage by avoiding regulations simply because they utilize the internet and undergo nominal protocol conversion during transmission. Commentators in this docket have made much over the protocol conversion that takes place during an IP-Enabled phone call.¹⁷ However, this does not negate the

¹⁶ See Time Warner, at 26; See also New York State Department of Public Service, Comments, Docket No. 04-36, at 4-5. (“NYSDPS”)

¹⁷ See Vonage at 34.

fact that the call, for all appearances to the end user is a phone call.¹⁸ Why should IP-Enabled Phone providers avoid regulation put in place to protect customers in this valuable service when these providers proffer these services as a replacement for wireline services?¹⁹ The answer is clear: they should not.

RNK's Broadband Voice Services currently provide near-identical functionality as traditional circuit-switched voice lines.²⁰ For example, at sign-up, an RNK customer provides the primary physical location where the service is being used. That location information is then populated in appropriate E911 databases, which ensures proper routing of emergency calls to the Public Safety Administrator ("PSAP") through the existing selective router/tandem, just like any other facilities-based local service. RNK obtains numbering resources directly from the NANP Administrator and Pooling Administrator. Requests from end users to port their existing telephone numbers to or from other carriers are handled as a matter of course. RNK is also compliant with all state and Federal rules, laws, and regulations with respect to billing, anti-slamming, and customer relations (e.g. residential termination rules). RNK maintains interconnection facilities with other LECs and IXC's for the transport and termination of traffic to the rest of the public switched network. RNK also collects and contributes to the Universal Service Fund, state taxing administration, Federal Excise tax, and various other end user

¹⁸ See *Generally* NYSDPS; *See also* Public Service Commission of Wisconsin, Reply Comments, Docket No. 04-36, at 3; *See also* NARUC, Comments, Docket No. 04-36, at 5.

¹⁹ Some comments have made much of the additional services and capabilities offered with the IP-Enabled phone Services, but in fact most of these services are provided by RNK currently and can be provided by other carriers. *See Vonage Comments* at 5.

²⁰ See, e.g., RNK NYPSC Tariff No. 1 – Telephone, Section 13, "RNK Broadband Voice Service" (issued May 24, 2004, effective June 23, 2004).

surcharges imposed by appropriate authorities with oversight over RNK's products.²¹ However, apparently, all this is impossible and RNK is a figment of a regulator's imagination.

RNK is complying with important public policy requirements with its IP-Enabled Phone services just as it would as if it were offering a wireline service. These regulations satisfy compelling state interests²² and are not simply there "under this guise of protecting consumers" while in essence primarily motivated to "preserve the advantages, and revenues, of monopoly incumbent local exchange carriers."²³

ii. IP-Enabled Telecommunications Services That Offer Merely A Long Distance Replacement Service Should Be Subject To Limited State Scrutiny.

IP-Enabled Telecommunications Services that offer merely a long distance replacement service should be subject to federal authority with limited state oversight. RNK is mindful of the concerns of some commentators that the "portable" nature of some of these services makes compliance with certain state requirements troublesome.²⁴ For instance, a provider of IP-Enabled Telecommunications Services could offer a supplemental long distance service that

²¹ It should be noted that some IP-Enabled telecommunications providers are collecting "regulatory fees" to recover for USF and other funds. RNK is concerned that these fees are being collected from end users under the guise of being mandated but not remitted directly to the proper authorities. *See* Vonage Website (visited July 14, 2004) http://www.vonage.com/help_faqs.php?topic=billing#charges ("What is the Regulatory Recovery Fee? The Regulatory Recovery Fee is \$1.50 per phone number. This is a fee that Vonage charges its customers to recover the costs related to Federal and State Universal Service Funds (USF) and other similar country specific funds, as well as other domestic and international fees and surcharges. Your total Regulatory Recovery Fee reflects a \$1.50 surcharge for every phone number you have, including primary voice lines, second lines, fax lines, Toll Free PlusSM numbers, SoftPhones and Virtual Phone Numbers). *See also* Vonage at 47 (claiming that non-facilities based voip providers contribute to the universal service fund as end users not through end user customers).

²² *See* NYSDPS, at 2-3, *and* Public Service Commission of Wisconsin, at 4.

²³ Vonage, at 14.

²⁴ *See* Vonage, at 19-20.

would allow customers to retain their local service provider.²⁵ In these instances the provider should still be subject to “truth-in-billing”, “slamming” and public disclosure requirements while avoiding the potentially burdensome issue of becoming a CLEC in a state. Further, since these services would be, for the most part, interstate and not what is thought of as “local” service, state commissions would not have the same compelling public safety concerns associated with such services.

IV. THE COMMISSION SHOULD PREVENT MONOPOLISTIC BOTTLENECKS FROM STIFLING COMPETITION IN THE IP-ENABLED PHONE SERVICES MARKETPLACE

a. “Bottleneck” Providers Of Broadband Services, Such As DSL Carriers And Cable Modem Providers Should Provide Non-Discriminatory Carriage Of IP-Enabled Telecommunications Services.

RNK agrees with commentators such as Vonage that the Commission should insure non-discriminatory access to broadband and DSL services.²⁶ Need for oversight is especially pressing where providers of IP-Enabled phone Service may have service offerings competing with the underlying DSL carriers and cable modem service providers. Providers should be prohibited from conditioning subscription to DSL on subscription to POTS or other wireline services, or alternatively, should be required to offer DSL as a “stand-alone” product, unlike some current ILECs.²⁷ Further, as indicated by Vonage, No broadband provider should be able

²⁶ Vonage, 9-11.

²⁷ For example, Verizon offers its Infospeed DSL Service only “over [...] facilities over [where] line sharing is available”, Verizon FCC Tariff 20, Part III, §5.1.2D (1st Revised Page 5-690, effective September 30, 2003). Also, when more than one service provider is involved, such as in a line splitting arrangement where the voice carrier and data carrier may be some combinations of ILEC- and CLEC-provided service (e.g. a situation akin to that alluded to in the BellSouth Louisiana/Georgia 271 order (FCC 02-147 at ¶157, Memorandum Opinion and Order, In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc for Provision of In-Region, InterLATA Services In Georgia and Louisiana, CC Docket 02-35, issued and released May 15, 2002.)) where a customer would be forced to either disconnect his DSL service to port his voice service to VoIP or obtain a new number for his voice service in order to keep his DSL.

to discriminatorily block or “de-prioritize” packets used for IP-enabled telecommunications service, nor should they be permitted to unreasonably prevent the attachment of devices or use of software that facilitates such services.²⁸ Only with these assurances can IP-Enabled Phone Service providers be competitive in a marketplace where they depend on services rendered by other providers.

²⁸ Vonage at 11; *See also* AT&T Corp., Comments, Docket No. 04-36, at 55.

V. CONCLUSION

RNK believes that IP-Enabled Phone Services provide the most promising opportunity for competition in local telephone service since the passage of the Act. As a result, the Commission should apply a "light" regulatory touch on a fair and minimal basis in response to compelling state and federal public interest and safety matters. The proper balance of regulation and market forces can promote the growth of IP-Enabled Phone Services and competition in general.

Respectfully Submitted,

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